IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5497 OF 2005

WITH

SPECIAL CIVIL APPLICATION NO. 5498 OF 2005

TO

SPECIAL CIVIL APPLICATIONNo 5522 of 2005
WITH
SPECIAL CIVIL APPLICATION NO.5585 OF 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RADHABEN D.BHIL

Versus

MANAGER VADILAL INDUSTRIES LTD.

Appearance:

1. Special Civil Application No. 5497 of 2005
GIRISH PATEL ASSOC for Petitioner No. 1
MR KARTIK A THAKAR for

M/S TRIVEDI & GUPTA for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
MR KL PANDYA for Respondents No.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 06/05/2005

ORAL JUDGEMENT

1. Leave to join the Assistant Commissioner of Labour, Gujarat State/Government Labour Officer is granted. The learned advocate for the petitioner shall carry out necessary amendment in the memo of the main petition being Special Civil Application No.5497 of 2005. Rest of the petitions are one page petitions, filed separately for each of the workmen.

2. Rule. Mr. Kartik A. Thakar, learned advocate appearing for the respondent No.1 waives service of notice of Rule on behalf of the respondent No.1. Mr.K.L.Pandya, learned A.G.P. waives service of notice of Rule on behalf of the respondent.

3. Present petition is preferred mainly for the reason that though the statement was made before the Industrial Tribunal, Ahmedabad by the respondent No.1 the workmen of the petitioner union were not allowed to join their duties. Initially, the complaint made by the petitioner for termination of services of the workmen at the behest of the respondent No. 1. Therefor, an application to that effect was also moved before the trial Court. It is submitted by the learned advocate for the respondent No.1 before the trial Court that there was no cessation or termination of the services of the workmen and if the workmen are desirous of joining their duties at the place of employment at village Pundhara, Taluka Manasa the workmen can go there for resuming their duties. Originally the workmen were working within the city of Ahmedabad. It is submitted by the learned advocate for the petitioner that as there was no cessation of services of the workmen by the respondent No.1, accordingly the order was passed by the Industrial Tribunal in Complaint - application in pending Reference that as there is no termination of services of the workmen, the application for interim relief filed by the workmen is not tenable at law. Even before this Court, the learned advocate for the respondent No. 1 made a statement that there is no termination or cessation of services of the workmen. Therefore, the learned advocate for the petitioner submitted that if the workmen are

allowed to join or resume their duties then the petitioner is not pressing for rest of the prayers. Time and again asked by this Court to the learned advocate for the respondent No.1 as to whether there is any cessation of service of the workmen, the learned advocate for the respondent No.1 in no certain terms pointed out that in fact there is no termination of services of the workmen but the petitioners have not resumed their duties at the relevant time i.e. December, 2004 despite intimation at, village Pundhara, Tal. Manasa. Learned advocate for the petitioner submitted that the workmen were not allowed to join their duties and hence two criminal complaints were filed at two different police stations. However, the Mr. Girish Patel, learned Sr. Advocate for the petitioner submitted that suffice it will be for the workmen if they are allowed to resume their duties with the respondent No.1 at village Pundhara, especially, when there is no termination of services of the workmen as on today.

4. The learned advocate appearing for the respondent No.1 mainly submitted that the petitions are not tenable at law. He also submitted that that the workmen may not be allowed to resume their duties now, at this belated stage, as they did not join their duties in December, 2004 when the respondent No.1 offered them the work.

5. Looking to the narrow controversy that there is no termination of services of the workmen, services of workmen are intact. This statement is made by the learned advocate for the respondent No.1 before this Court as well as before the trial Court. Initially, the management offered work to the workmen at village Pundhara, Taluka Manasa in the month of December, 2004. But as per the management they have not resumed their duties.

6. It is the petitioner's contention that though two criminal complaints have been filed, the management is not allowing the workmen to resume their duties. The petitioners are not challenging any award or order passed by the Industrial Tribunal, Ahmedabad but are relying upon the interim order passed by the Industrial Tribunal, Ahmedabad to the effect that there is no cessation of services of the workmen till today by the respondent No.1.

7. Looking to the facts and circumstances of the case and submissions made by the learned advocate for the parties and the material on record, the respondent No.1 is hereby directed to allow the workmen to resume their duties on 13-5-2005 at 8-00 a.m. and the respondent No.1

shall put the workmen in necessary shift as per their administrative contingencies and suitability. The Assistant Commissioner of Labour/Government Labour Officer who are newly joined parties to the present petition, shall monitor over functioning of the joining of the duties by the workmen with the respondent No.1 and when the workmen for for resuming their duties, the management shall allow them to join their duties especially when there is no termination of services of the workmen till today. The Assistant Commissioner of Labour/Government Labour Officer shall remain present at the place of employment and if the workmen are not going to resume their duties or if the respondent No.1 is not allowing the workmen to resume their duties, necessary report shall be prepared by the Assistant Commissioner of Labour/Government Labour Officer who are newly added parties.

8. The contention raised by the learned advocate for the respondent No. 1 that the petition is not maintainable at law. But looking to the facts and circumstances of the case, the present petition is tenable at law for the reason that Reference is pending before the Industrial Tribunal, Ahmedabad wherein complaint was made and reply of the management before the Tribunal was there is no cessation of service of the workmen. Now when there is no cessation of services of the workmen, respondent No.1 ought to have allowed the workmen to resume their duties but the management is not allowing the workmen to join their duties. Under Article 21 of the Constitution of India, the workmen have right to live and right of live includes right to continue in service and to get wages especially when there is a statement of management that there is no termination of services of the workmen and the workmen are ready and willing to join their services.

9. The second contention raised by the learned advocate for the respondent No. 1 that at belated stage the workmen cannot be allowed to resume their duties. In the opinion of this Court, this is not very belated stage for resuming the duties by the workmen. The whole dispute had arisen in recent past i.e. in December, 2004 the offer for resuming duties was made to the workmen by the management and therefore complaints were filed by the workmen in pending Reference. Therefore, the whole complaint is based upon termination of services of the workmen. But there is a statement of the respondent No. 1 that there is no termination or cessation of services of the workmen and therefore there was no need for the workmen to file any complaint in pending Reference. The

whole dispute is of recent past and when the offer was made to the workmen by the management to resume their duties in December, 2004, in my opinion, no much time has been lapsed. The contentions of the respondent No.1 are that the present petition is not maintainable and at belated stage the workmen should not be allowed to resume their duties. Both these contentions of the learned advocate for the respondent No.1 are not accepted by this Court. In paragraphs No. 4.1, 4.2 and 4.7 of the affidavit-in-reply, it is referred more than once by the respondent No.1 that there is no termination of services of the workmen.

10. For the aforesaid reasons, all these petitions are allowed. In all these petitions, Rule is made absolute to the aforesaid extent, with no order as to costs. D.S. is permitted.

(D.N. Patel, J.)

_/\/Satwara/